90-1388

Supreme Court, U.S.
FILED
FEB 25 1991
OFFICE OF THE CLERK

No._____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1990

J.R. Verdugo,
Petitioner

vs.

The STATE of California,
Respondent

On a Writ of Certiorari
to the Supreme Court of California

PETITION FOR CERTIORARI

J.R. Verdugo, pro se
12017 Deana Street
El Monte, CA 91732
(818) 443-4459

QUESTIONS PRESENTED

1. Does a contract exist with the State and its students at a State University?

2. Is the State, through its agent, immune to civil action for its failure to discharge its mandatory duties of state statute's 66013 and 66300 of the Education Code?

3. Does a State institution have the right to ignore its mandatory duties in that it is conducting classes in violation of state statute of the Education Code?

4. Can the State can be held liable for special damages?

5. Can the State be liable for compensatory damages for maintaining suit?

6. Can the State also be liable in tort as a result of a breach of contract?

7. Can the State also be held liable for loss of future income as a result of a continuing breach of contract?

PARTIES TO THE PROCEEDING BELOW

Petitioner, J.R. Verdugo, pro se, in behalf of himself and others similarly situated.

Respondents are the Atorney General, et al, of California on behalf of California State University at Los Angeles and the State of California, the real party in interest.

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OPINIONS BELOW

The opinion of the Court of Appeal of the State of California, Second Appellate District, Division Seven, is reproduced in Appendix B, pp 29b-39b hereto and is not published.

The judgment, reproduced in Appendix A, pp 26a-28a hereto, which petitioner seeks to have reviewed is dated October 20, 1989, and was entered on October 25, 1989.

JURISDICTION

A rehearing by the Court of Appeal of the State of California, Second Appellate District, Division Seven, was denied on October 11, 1990. Review in the California Surpreme Court was denied on November 28, 1990.

The jurisdiction of this Court is invoked under Title 28, section 1257, subdivision (a) of the United States Code.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. United States Constitution, Amendment 14, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. United States Code, Title 28, Section 1257, subdivision (a):

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or suthority exercised under, the United States.

3. Education Code, Section 66013:

Each segment of public higher education shall strive for excellance in its sphere, as assigned in this part.

4. Education Code, Section 66300:

The institutions shall adopt procedures by which all students are informed of such rules and regulations, with applicable penalties, and any revisions thereof.

5. Education Code, Section 66400:

No person shall prepare, offer to prepare, cause to be prepared, sell, or otherwise distribute any term paper, thesis dissertation, or other written material for another person, for a fee or other compensation, with the knowledge, or under circumstances in which he should reasonably have known, that such term paper, thesis, dissertation, or other written material is to be submitted by any other person for academic credit at any public or private college, university, or other institution of higher learning in this state.

6. Education Code, Section 66402:

Any court of competent jurisdiction is hereby authorized to grant such relief as is necessary to enforce the provisions of this chapter, including the issuance of an injunction.

7. Government Code, Section 815:

Except as provided by statute:

(a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of

the public entity or a public employee or other person.

(b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person.

8. Government Code, Section 815.6:

Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised diligence to discharge the duty.

STATEMENT OF CASE

A. Factual Background

Petitioner was a full time student a California State University at Los

Angeles, hereinafter known as CSULA. He began attendance in the fall of 1986 and did not have any extracurricular activities, i.e., employment.

He qualified for the classes that he signed up for in the School of Sciences, but could not maintain a decent grade point average and, therefore, was forced to take fewer classes. He continued to add study time but without much success.

He began to notice that other students, the ones who were successful, were getting previous student's work--the ones who had completed the class previously--to study from and added it their own work for academic credit. Petitioner ultimately took only one class of which he was more than

qualified to be in and studied full time. He was not successful in that class and thereafter filed a Student Grievance Report as per Appendix G (Student Grievance Procedures) of the CSULA rules, stating that there is something wrong with the grading system.

During the interim period, a minister pointed out to him that getting someone else's work for one's own credit is "cheating." Petitioner's efforts led him to find statute 66400 of the Education Code which expressly forbids anyone from providing written work for another for credit when it has been assigned. Petititoner notified the school authorities of the problem. The school as well as the President of the

school did nothing and dismissed the entire matter.

B. Proceedings Below

Petitioner filed suit for a refund of tutition in the Small Claims Court and brought a witness to support his allegations. The action was dismissed due to the "Board of Control rule." Petitioner thereafter came before the board and the matter was deemed rejected.

Petitioner then brought suit in the Municipal Court and asked for additional damages. The State ignored the problem of plagiarism and denied the allegations. Petitioner was faced with financial and time losses due to the lack of cooperation of defendant counsel

and thus had the case dismissed.

Due to petitioner's experience that it is impossible to compete in a grading system based on plagiarism, he had no alternative but to plan for a long term effort in the judicial system. Therefore, petitioner filed suit in the Superior Court and the State demurrered. Petitioner submitted a Memorandum of Points and Authorities at the hearing and argued with the moving party. A part of which complainant stated that the State is proceeding improperly. The court opted to sustain the State's Demurrer.

An appeal was filed in the Court of Appeal and a hearing was granted. The judgment thereafter was affirmed and an

opinion was issued. Petitioner requested a rehearing and it was denied.

Petitioner requested a hearing before the California Supreme Court and it was denied.

Petitioner is requesting for a Writ of Certiorari in this court.

REASONS FOR ALLOWANCE OF THE WRIT

Introduction and Summary of Argument

It is well established in both state and federal courts that the relationship between university and student is contractual in nature. Mahavongsanan v. Hall (1976) 529 F2d 448; Corso v. Crieghton University (1984) 731 F2d 529; Stetson University v. Hunt (1924) 88 Fla 510. The courts have and continue to

grant judgments in support of this implied contract in that said implied contractual terms are evidently legal, binding, and enforceable. (id)

The question raised is whether or not the "university" is also legally obligated in some way by said implied contract. It is evident that the expressed terms of said contract contemplate the academic personnel and not the university. However, petitioner has found the following laws that are applicable to said university.

As a state public institution, the university enjoys governmental immunity to the extent that only a statute can declare it liable. Gibson v. Pasadena (1978) 83 CA3d 651, 14 CR 68; Duarte v.

San Jose (1980) 100 CA3d 348, 161 CR 140; Cowing v. City of Torrance (1976) 60 CA3d 757, 761, 131 CR 830, 833.

The general rule of governmental immunity is set forth in California Government Code, section 815 and the pertinent part states: "Except as otherwise provided by statute: * * *." This section expressly states the exception to the university's immunity. The Legislative Committee Comment to section 815 clarifies the impact of the section. "In the absence of a constitutional requirement, public entities may be held liable only if a statute (* * *) is found declaring them to be liable."

Let there be no "misunderstanding"

concerning the legal obligations of CSULA as declared by state statutes. Therefore, we will consider the statutes which make CSULA (the state) liable and those which mandate duties upon the university the obligations of which are legal, binding, and enforceable.

I

BY VIRTUE OF A CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION FORBIDS ANY STATE TO DENY ANY WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS, AND ALL PERSONS SUBJECTED TO STATE LEGISLATION MUST BE TREATED ALIKE, UNDER LIKE CIRCUMSTANCES AND CONDITIONS, BOTH IN PRIVILEGES CONFERRED AND IN LIABILITIES IMPOSED

The following laws are presented to this court in support of petitioner's contentions:

> (1) The institutions shall adopt procedures by which all students are informed of such rules and regulations, with applicable penalties, and any revisions thereof. (Ed C, Sec 66300)

During the interim period of this litigation, petitioner discussed this act of getting some else's work (plagiarism) with other students at said university and found that it is the general opinion of the student body at CSULA that they don't believe that getting someone else's written work in order that they may achieve superior grades is wrong. In other words, they said "it can't be wrong because it is the only way one can achieve successful

grades." The facts under this general consensus supports the contention that said university is either negligent or at least grossly deficient and is evidently refusing to meet its standard of duty to inform the student body of said contract.

> (2) No person shall perpare, offer to prepare, cause to be prepared, sell, or otherwise distribute any term paper, thesis dissertation, or other written material for another person, for a fee or other compensation, with the knowledge, or under circumstances in which he should reasonably have known, that such term paper, thesis, dissertation, or other written material is to be submitted by any other person for academic credit at any public or private college, university, or other institution of higher learning in this state. (Ed C, Sec 66400)

This relatively new statute was constructed to promote, rather than to

defeat legislative purpose and policy in that the deliberate ignoral of petitioners formal Notice is also a denial of the rights of the petitioner declared by it and, as long as CSULA's students are allowed to violate this statute by the "do nothing" administration, the harm caused to petitioner is that he is not allowed to earn a succcessful grade at said university as well as all of the consequences of not obtaining successful grades. The Court of Appeal has stated in its opinion that "[t]he school authoritites [have] absolute discretion in determing whether a student has been delinquent in his studies, * * *" (B. 35b) In contrast, CSULA's Student

Services Grievance Committee has stated in its report that "The amount of time devoted to class cannot be an objective criterion for grading. Grades are based on performance." Under this criteria, the school is unwittingly allowing students to plagiarize tests of which they are delinquent in their studies but not in their exam scores.

> (3) Each segment of public higher education shall strive for excellance in its sphere, as assigned in this part. (Ed C, Sec 66013)

Excellance cannot be attained when blatant violation of regulation's and state statutes are ignored. The California Supreme Court in Hall v. City of Taft (1956) 47 C2d 177, 302 P2d 574, 576, supports the Legislature as having

absolute power over public schools:

> In harmony with these provisions [constitutional] it has been held that the power of the state Legislature over the public schools is plenary, subject only to any constitutional restrictions. (Hall, id, 302 P2d 577) (emphasis added)

The president of said university has no authority to establish his own standards for rejecting valid student grievances different from those established pursuant to state statutes and school regulations.

> (4) Any court of competent jurisdiction is hereby authorized to grant such relief as is necessary to enforce the provisions of this chapter, including the issuance of an injunction. (Ed C, Sec 66402)

This statute is perfectly clear in its meaning and yet the State bears false witness and will not face the real

issues of the matter, and the courts are reluctant to intervene in the standards that the Legislature has provided for the schools--an ironic affair.

> (5) Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised diligence to discharge the duty. (Gov C, Sec 815.6)

By examination of the record, it appears that said president merely read the report of the Student Services Grievance Committee and then simply closed the entire matter altogether. This statute mandates that it is CUSLA's responsibility to establish its efforts

in resolving the problem of plagiarism.

II

TESTS WHICH ARE NOT FAIR, IN THAT THEY COVER MATERIAL NOT TAUGHT IN THE CLASSROOM, ARE NOT RATIONALLY RELATED TO A STATE INTEREST, AND ITS USE VIOLATES EQUAL PROTECTION

It cannot be over-emphasized of what the effect plagiarism has had in the grading system in the School of Sciences. The following is an actual true story as to the magnitude of the impact plagiarism has had in the academic learning process:

The "all-out" effort made by petitioner and the results of the math final initiated a Student Grievance Report as reproduced in C. 40c-45c and

started the administrative procedure in 1987.

It clearly states that the teacher, Mr. Lee, who gave the final examination to his students and who taught the entire quarter except for the first two weeks, was only able to complete less than half of the ten problems of the said final examination because it was "too difficult." (C. 42c)

The cause of Mr. Lee's inability to complete the highly complex math problems is not due to his lack of his "unique qualified training and experience," but is simply due to fact that he did not obtain the written solutions to these same problems from someone else as some of the students in

his class had done and of which, by the way, these individuals received superior grades.

These facts support petitioner's contention that it is impossible for petitioner to compete for a successful grade when the necessary details of the solutions were not taught in the classroom in that the teacher's failure of the same test proves it. Therefore, its use violates equal protection. (Debra P. v. Turlington (1981) 644 F2d 397, 405)

III

NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERY WITHOUT DUE PROCESS OF LAW

Petitioner alleges that his tuition

was unjustly taken from him without due process of the law in that his money is a protected property interest which was paid to said university for classes where the education code indicates these classes would be graded in accordance with said mandated duties; that these mandatory duties establish the reasonable expection that a student will not be graded in violation of said implied contractual terms and state statues.

That the results of said corrupt system vastly diminishes petitioners credibility and status, and that it will ultimately deny him admittance to said university.

It has been said that the Constitution

does not create property interests. (Winkler v. County of Dekalb (1981) 648 F2d 411, 413) Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law * * *, e.g., the Court has held that a person receiving welfare benefits under statutory and administrative standards defining eligibility for them has an interest in continued receipt of those benefits that is safeguarded by procedural due process. (Board of Regents v. Roth (1972) 408 US 564, 576)

That the interest of the eligible petitioner in the uninterupted status as being eligible, which will provide him

with opportunities in vast fields of academic interests and higher paying careers, coupled with the university's interest that he not be erroneously academically disqualified, clearly outweighs the State's competing concern to prevent any unecessary judicial precedence or monetary awards. See Goldberg v. Kelly (1969) 397 US 254.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Dated: February 23, 1991

Petitioner pro se

JOHN K. VAN DE KAMP, Attorney General
of the State of California
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SUPERIOR COURT
OF THE
STATE OF CALIFORNIA
FOR THE
COUNTY OF LOS ANGELES

J.R. VERDUGO,	) Case No. C736061
Plaintiff,	) JUDGE LOREN MILLER
vs.	) ORDER ON DEMURRER TO COMPLAINT;
STATE OF CALIFORNIA,	) JUDGMENT OF DISMISSAL
Defendant.	)

The demurrer of defendant State of California came on regularly for hearing by the court on October 20, 1989.

Plaintiff J.R. Verdugo appeared pro se and Anne Hunter, Deputy Attorney General, appeared as counsel for the defendant.

After having read and considered the supporting points and authorities and having considered the arguments of counsel, and good cause appearing therefore, the court:

(1) ORDERS that the demurrer be, and hereby is, sustained without leave to amend on the grounds that the complaint fails to state facts sufficient to state a couse of action;

(2) ORDERS that the above entitled action is hereby dismissed with prejudice under the provisions of section 581(f)(1) of the Code of Civil

Procedure in that on October 20, 1989, the court sustained the defendant's demurrer to the complaint without leave to amend; and

(3) ORDERS that the County of Los Angeles have and recover costs against plaintiff J.R. Verdugo in the sum of $14.00 for filing fees which the defendant would have paid but for Government Code sections 6103 and 6103.5.

Dated: OCT 25, 1989

Judge of the Superior Court

LOREN MILLER, JR.

NOT TO BE PUBLISHED

IN THE

COURT OF APPEAL

OF THE

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

J.R. VERDUGO,	) No. B048005
Plaintiff and Appellant,	) (Super. Ct. No. C736061)
v.	)
STATE OF CALIFORNIA,	)
Defendant and Respondent.	)

APPEAL from a judgment of the Superior Court of Los Angeles County. Loren Miller, Jr., Judge. Affirmed.

J.R. Verdugo, in pro. per., for Plaintiff and Appellant.

John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Henry G. Ullerich, Supervising Deputy Attorney General, and Anne Hunter, Deputy Attorney General, for Defendant and Respondent.

Appellant is a former university student who, after receiving failing grades in four math and physics courses, sued for money damages. Respondent's demurrer was sustained without leave to amend and the action was dismissed. We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

Liberally consrtuing the complaint,

including its three exhibits, these are the essential facts.

Appellant was a properly enrolled student at California State University Los Angeles (CSULA). From Spring 1986 through Summer 1987 he took and failed four courses: Physics 101, Calculus 206, Quantitative Analysis 201, and Calculus 208. His total tuition for these courses was $620.

Although appellant "studied extremely diligently" CSULA gave appellant no credit for his effort but instead graded him only on his test performance.

Appellant did not plagiarize but other students who did plagiarize, despite a CSULA rule probhibiting plagiarism, received passing grades.

Appellant informed the CSULA president of widespread student plagiarism but no action was taken.

Appellant made a tuition refund claim but his claim was denied.

Appellant filed a complaint alleging six causes of action denominated breach of contract, negligence, fraud, corruption, and damages. He sought $786 special damages[1] and $1 million general damages.

Respondent both specially and generally demurred. The trial court sustained without leave to amend the

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1 The discrepancy between the total tuition cost of $620 and the $786 special damages figure is not explained.

general demurrer[2] and dismissed the action.

DISCUSSION

Standard of Review

"In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable

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2 Appellant made no request to the trial court to amend the complaint. On appeal, appellant has not suggested he could amend the complaint to cure its defects.

interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer[2] is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibiltiy is squarely on the plaintiff." (Blank v. Kirwan (1985) 39 C3d 311, 318.)

Judicial nonintervention in scholastic affairs

Although courts have actively reviewed disciplinary action by education institutions against students (Mahavongsanan v. Hall (5th Cir. 1976) 529 F2d 448, 449) they have generally not interfered with a school's academic rules or standards.

The reason for and the effect of this "judicial nonintervention in scholastic affairs" "' is to give the school authorities absolute discretion in determining whether a student has been delinquent in his studies, and to place the burden on the student in showing that his dismissal was motivated by arbitrariness, capriciousness or bad

faith. The reason for this rule is that in matters of scholarship, the school authorities are uniquely qualified by training and experience to judge the qualifications of a student, and efficiency of instruction depends in no small degree upon the school faculty's freedom from interference from other noneducational tribunals. It is only when the school authorities abuse this discretioin that court may interfere with their decision to dismiss a student.'" (Wong v. Regents of University of California (1971) 15 CA3d 823, 830; see also Paulsen v. Golden Gate University (1979) 25 C3d 803, 808-809.)

//

Arbitrariness, capriciousness or bad faith

Applying the previously stated standard of review, we now consider whether appellant has alleged, or reasonably could allege, that respondent acted with arbitrariness, capriciousness, or bad faith resulting in harm to appellant.

Distilled, the complaint alleges only two derelictions by CSULA: it has failed to detect and punish plagiarism; it ignores "effort" and only counts performance.

The complaint does not allege any of the following: that the examinations in the four courses were inappropriate or unfair; that the grading of the examinations was inappropriate or

unfair; that appellant's examination performances were satisfactory or deserving of a passing grade.

Appellant has not alleged any arbitrariness, capriciousness, or bad faith by CSULA. Nor has appellant stated a cause of action by alleging only "diligent" but not satisfactory examination efforts. Finally, peer plagiarism did not entitle appellant's non-plagiarized but unsatisfactory performance to a passing grade.

We conclude the trial court acted within its discretion in sustaining the demurrer without leave to amend.

DISPOSTION

The judgment is affirmed. Costs on appeal are awarded to respondent.

NOT TO BE PUBLISHED

WOODS (Fred), J.

We concur:

LILLIE, P. J.

JOHNSON, J.

FROM: J.R. Verdugo
ID# 528197
12017 Deana Street
El Monte, CA 91732
(818) 443-4459
January 22, 1988

TO: University Student Grievance Committee
c/o Vice President for Student Services and Advocacy/Dean of Students Office, SA 117

Re: STUDENT GRIEVANCE REPORT

TEACHER: VIN LEE

Sirs:

THE FOLLOWING ARE COMMENTS ON THE SUBTOPICS OF THE SSGC:

ISSUES BEFORE THE SSGC

1. Student did complete homework assignments and, after the midterm, the extensive review in class was a review of what the student had already accomplished in his homework studies. Based on the efforts of the student, the

student learned very little in class in regard to the homework.

Moreover, after having spent an average of 6 hours a day on the homework and receiving a poor grade on the midterm, student added several more hours of studying to his class.

2. The amount of time devoted to this class was significantly more than the amount of time devoted to the previous Calculus class of which the student received a much better grade.

RECOMMENDATIOINS FOR ACTION

1. The student alleges that the teacher was inadequate to teach students who are performing the necessary work and getting all the help offered by the university. The student wishes to

stress the point that the student bases his allegation on previous grade-to-study record of an above average grade on the 207 Calculus class.

Furthermore, the student has proof that the teacher was unable to complete the Final exam himself; that the teacher wrote on the Final exam "too hard" on one of the problems given to the students. Thereby exhibiting a standard which the students were expected to accomlish but of which the instructor was incapable of accomplishing.

The student did in fact spend all his time after class studying with the tutors so as to complete his homework. The student has witnesses to support his testimony, one of which is a math

teacher at CSULA, Mr. Amir Ghavam.

STUDENTS OVERALL OPINION

I do not wish to single out any particular teacher in the math department based on his/her standard of grading. My experience in the math department is that irregardless of how hard the student tries to pass calculus successfully the first time, they will not be successful.

After having had two previous quarters of calculus and putting more time and getting more help on each successive attempt, up until I made an all out effort to pass the first time through on third quarter calculus, I still ended up with the same grade.

The first attempt was always a "D" and

if I survived into the next quarter, I was allowed to received a "B" grade on the second attempt. I am under the impression that the math department does not want anyone to pass successfully the first time through their class. This implies that they will get paid twice by the student for teaching the same class.

I agree that CSULA is inexpensive compared to other colleges and their salaries may be low, but I have no intentions of paying twice for the same class after having done more than my share of work as expected from a student.

The only proof I have for the last allegation is published in the November 1987 issue of "Science [News]" magazine

(attached); the magazine is well known to the scientific community.

Cordially,

J.R. Verdugo

FINDINGS AND RECOMMENDATIONS
June 23, 1988

In the Matter of a Grievance

Between

J.R. Verdugo
Against Vincent Lee, Mathematics
and Computer Science Department

ALLEGATIONS

The student claims he was not given credit for the work he had done for Math 208. Based on the amount of time he spent studying, he alleges that the grading system does not allow an above average student doing more then his share of work to pass the class with a decent grade the first time through. The student also claims there were not any quizzes to show the student how he was progressing and that the teacher failed to do his job.

SANCTION SOUGHT

The student asks for a re-evalution of what took place in the class and what is expected from students to earn at least a "C" in Mathematics 208; after which he expects a more justifiable grade. If

this is not possible, then the grievant demands a full refund for the class and compensation for the ten weeks he spent in the class.

COMMITTEE METHODOLOGY

May 12, 1988 — Organizational meeting to review documents. Discussion and review Findings and Recommendations

FINDINGS OF FACT

After a review of documents submitted by the grievant and the School Student Grievance Committee, the University Student Grievance Committee finds:

1. The student had the opportunity to evaluate his progress and status;

2. The student was aware that the grade was based only on a midterm and a final.

3. The student's grade was based on performance, not on effort or time spent preparing for class.

RECOMMENDATION

After a thorough review of both the student's and School Committee's

positions, we find no cause to change the student's grade or to compensate him for the time spent in class.

Signatures:

_____
Michael D. Fels, Chairperson

_____
Irene Molloy, Faculty Representative

_____
Christopher Kelly,
Student Representative

DECLARATION OF SERVICE

At the time of service I was least 18 years of age and not a party to this action, and I served three (3) copies of a PETITION FOR WRIT OF CERTIORARI on the following party:

State of California
ATTN: Ann Hunter, Deputy Aty. Gen.
3580 Wilshire Boulevard
Los Angeles, California 90010

And forty (40) copies on the following:

United States Supreme Court Bldg.
ATTN: Joseph F. Spaniol, Jr., Clerk
1 First Street N.E.
Washington, D.C. 20543

I served the above named by personally placing Petition in a stamped envelope addressed as above then sealed and deposited in the U.S. Mail in Los Angeles county.

Richard Chavez
4913 Manzanita
Montclair, Ca 91763

I declare under penalty of perjury that the foregoing is true and correct.

Date: February 23, 1991

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Declarant